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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/553,334	07/12/2006	Alfred Langerak	294-232 PC/T/US	2080
23869 7590 06/12/2009 HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791				
EXAMINER				
ACKUN, JACOB K				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
06/12/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/553,334

Applicant(s)

LANGERAK, ALFRED

Examiner

Jacob K. Ackun Jr.

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13 and 15-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13 and 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 16-19 and 22-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 16-19 and 22-25 remain indefinite for the reason stated in the same rejection in the last office action. Again, the specific package features that are intended to be encompassed by all of the limitations in the claims having to do with the features of the mold can not be determined. With regard to new claim 26 it is not clear what is intended by the recitation that the longitudinal edge is slightly curved in view of the recitation in claim 11 that it is the closing parts that are slightly curved. Claim 27 has the same defect, and moreover, claim 27 is drafted so that it is not clear whether the claim requires the package to have a curved edge. For example, the claim is vague as to whether the “curved longitudinal edge” therein is the same as or different from the “longitudinal edge” of claim 11.
3. Claims 11-13 and 15-27 are finally rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kumakura et al. (2006/0000738) alone, or Kumakura et al. in view of the

applicant's own disclosure of the prior art. The rejection is set out in the last office action and is incorporated herein in its entirety by reference.

4. Claims 11-13 and 15-27 are finally rejected under 35 U.S.C. 102(b or e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hauser et al., Paik or Freehan Jr., alone, or further in view of applicants own disclosure of the prior art. The rejection is set out in the last office action and is incorporated herein in its entirety by reference.

5. Applicant's arguments filed 3/10/09 have been fully considered but they are not persuasive. In the last office action claims 16-19 and 22-25 were rejected because it was not clear to the examiner how the limitations in the claims having to do with the mold further limited the claimed packages. In response applicant states that it is the applicant's belief that the recited mold features impart structural limitations to the series of packages claimed. See the bottom of page 1 of the Remarks. However, this statement clearly does not address the basis for the rejection. That is, the applicant's argument does not state what the structural limitations of the package or packages are that the claimed mold features are intended by the applicant to encompass. As a different issue, it is noted that at least for now, the applicant does not appear to be arguing that any specific structural elements that may be encompassed by the mold features and process steps are not

shown by the prior art. On the other hand, the examiner presumes that all of the many limitations having to do with the mold features are in the claims to the package or packages for a reason. The examiner is merely asking why.

Next, the applicant also argues that the structure implied by process steps should be considered when assessing the patentability of product-by-process claims over the prior art, “especially...where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product”. Again, this argument merely restates relevant authority without answering the examiners question. For example, the examiner never indicated that product-by-process steps should be ignored during examination. The question is, what is/are the structural elements in the claims in this case that are implied by the process steps recited in the same claims? In the first paragraph on page 2 of the Remarks the applicant appears to indicate that the answer may be found in the language added to each of the independent claims rejected under the noted ground of rejection, at the ends thereof. Applicant restates the limitation in the claims that the packages differ in one of form, suspension means and receiving means based on the first and/or second insert pieces provided. This argument is unconvincing. It still does not give a clue as to the particular structure of the packages that is added by the process step/mold features in question. For example, what is the structural

difference between packages that differ in at least one of form, suspension means and receiving means on the one hand, and packages that differ in one of these attributes based on insert pieces provided in the mold from which the packages are made? The examiner can not make out what the structural differences would be. Additionally applicant's argument does not account for all of the other mold features and process steps recited in the claims. For example only, looking at claim 16, the applicants argument clearly does not address what the specific structural features of the packages are, that are added by all of the mold features and process steps recited from lines 7 through lines 15 of the claim, these portions making up more than half of the claim. Claim 16 is a product claim. While not specifically stated by applicant in the proffered argument as to what the law is in this area, there is clearly absolutely no requirement that applied prior art show the process steps. Again the question is what are the structures that all of the process steps and mold features in all of the claims add to the respective claims?

Regarding the rejection over the prior art, the examiner first notes that per the usual practice, the claims are rejected based on those portions thereof that can reasonably be understood. The examiner also initially notes that as indicated above, applicant's arguments are also confined to these portions of the claims. Thus applicant argues that the applied prior art does not disclose slightly curved

parts adjacent the hinge. The examiner disagrees. Like most packages of the type under consideration herein various portions of the closing parts of the applied references are clearly identifiable as being “slightly curved” “at least adjacent the hinge means”, as specifically recited in the claims. As seen in the applied references the curvatures can be for holding specifically shaped product or for aesthetic reasons. Clearly applicant is not the first to make portions of closing parts of injection molded packages “slightly curved”. Applicant also argues that there are no curved parts of the prior art packages that make those packages freestanding. In response it is pointed out that this is not what the claims require. For example, claim 11 can clearly be interpreted as requiring that the package be capable of standing freely on a longitudinal edge located adjacent the hinge means or formed by the hinge means as well as requiring the slight curvature discussed previously. The claim does not have to be interpreted in such a way that the two are connected. In any event, like many other packages of the type under consideration here, the packages of the applied prior art can freely stand on longitudinal edges located adjacent their hinges based on the shape of the packages adjacent the hinges. Some of these shapes can be described as slightly curved.

In conclusion, claim 11 (a combination that for the other independent claims forms the majority of the portions of the claim that can reasonably be understood)

is too broad. In addition to the cited prior art, many more common packages indicate the same. One merely has to look in ones refrigerator or visit a grocery store and pick up a ubiquitous egg carton and stand it on a portion of its edge adjacent the hinge. Note also all of the various portions of the carton closing parts that can be said to be adjacent the hinge and “slightly curved”. The examiner just tried it with an egg carton and with a small plastic toolbox in the examiners possession and it worked just fine.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob K. Ackun Jr. whose telephone number is (571)272-4418. The examiner can normally be reached on Monday through Friday 8.30AM-5.00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or

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571-272-1000.

/Jacob K. Ackun Jr./
Primary Examiner, Art Unit 3728